

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

WILLIAM JOHNSON, et al.,

Plaintiffs,

v.

ELIZABETH HERTEL,

Defendant.

Case No. 2:17-cv-00124

HON. PAUL L. MALONEY

**STIPULATED ORDER**

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**STIPULATED ORDER**

WHEREAS Plaintiffs bring this case alleging that Michigan Administrative Code Rule 400.9415(3) ("Rule 415") violates their Second and Fourteenth Amendment rights;

WHEREAS the Michigan Department of Health and Human Services (MDHHS) has undertaken efforts to amend Rule 415;

WHEREAS, based on MDHHS' efforts to amend Rule 415, the parties have reached a settlement in principle to resolve this matter. The settlement is dependent on the promulgation of the amended Rule 415. Once amended Rule 415

is promulgated, the parties intend to promptly settle the case and enter a stipulation of voluntary dismissal;

WHEREAS, despite the lengthy delay in promulgating the amended Rule 415, MDHHS remains committed to amending the Rule. On April 10, 2023, MDHHS submitted a rule set, the Foster Family Homes and Foster Family Group Homes Rules, containing amended Rule 415 to the Michigan Office of Administrative Hearings and Rules (MOAHR), the state agency that manages the promulgation of administrative rules in Michigan. By statute, MOAHR must undertake a review of the rules. See MCL 24.234(2). The rules are then sent to Legislative Services Bureau, a bureau within the Michigan Legislature, who must “promptly issue a certificate of approval indicating [that] the proposed rule is proper as to all matters of form, classification, and arrangement” and send the rules back to MOAHR. MCL 24.245(1). Once these procedures are complete, MOAHR will transmit the rule set to the Joint Committee on Administrative Rules (JCAR), triggering a 15 legislative-session-day<sup>1</sup> timeline for the rules to become officially promulgated if no objections are raised. See MCL 24.245(2); MCL 24.245a(1), (3);<sup>2</sup>

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<sup>1</sup> The Legislative calendar is available here: [http://www.legislature.mi.gov/\(S\(jl02ifmutbxor2hbxvxfpici\)\)/mileg.aspx?page=session\\_schedules](http://www.legislature.mi.gov/(S(jl02ifmutbxor2hbxvxfpici))/mileg.aspx?page=session_schedules). By way of example, if MOAHR transmits the rule set to JCAR on April 26, 2023, based on the legislative calendar, MDHHS anticipates the rule set would be officially promulgated on May 31, 2023.

<sup>2</sup> The status of the pending rule set is available here: <https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=131>.

WHEREAS MDHHS has advocated MOAHR for quick processing and requested the rules be transmitted to JCAR as soon as possible to trigger the 15 session-day timeline. MDHHS does not anticipate any objection to the rule set and anticipates the rule set being transferred to JCAR within the next ten days;

WHEREAS, on December 22, 2022, the Court issued an order lifting the stay in this matter and setting the dispositive motion deadline on April 28, 2023 (ECF No. 125); and

WHEREAS the parties stipulate and agree to adjourn the dispositive motion deadline to avoid unnecessary costs and fees. While long delayed, the parties agree that further motion practice in this matter is unnecessary given the impending promulgation of the amended rule.

WHEREFORE, it is hereby ORDERED that the deadline to file dispositive motions is adjourned until June 9, 2023.

Dated: April \_\_, 2023

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Paul L. Maloney  
United States District Judge

IT IS SO STIPULATED:

Dated: April 19, 2023

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*/s/ David G. Sigale (with permission)*  
David G. Sigale  
Attorney for Plaintiffs

Dated: April 19, 2023

/s/ Neil Giovanatti

Neil Giovanatti (P82305)

Attorney for Defendant